

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT HENDRICKSON
Petitioner,

v.

STEVEN O'BRIEN
Respondent.

Civil Action No. 04-40153-FDS


RESPONDENT'S MOTION TO DISMISS

Steven O'Brien, the Superintendent of the North Central Correctional Institution, the respondent, respectfully moves this Court to dismiss the above-captioned petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on the ground that the petition is time-barred. *See* 28 U.S.C. § 2244(d)(1). In further support of this motion, the respondent has filed herewith a memorandum of law.

WHEREFORE, the respondent respectfully requests that this Court dismiss this petition with prejudice.

Respectfully submitted,

THOMAS F. REILLY
Attorney General


Eva M. Badway
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200, ext. 2824
BBO # 635431

Dated: September 2, 2004

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2004, I caused a copy of the above Motion to Dismiss to be served by first-class mail, postage prepaid, upon Robert Hendrickson, *pro se*, North Central Correctional Institution, P.O. Box 466, 500 Colony Road, Gardner, MA 01440.

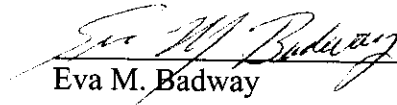

Eva M. Badway

Exhibit A

COMMONWEALTH VS.

ROBERT W. HENDRICKSON

90 — 2250

OF WORCESTER

COMMONWEALTH
OF
MASSACHUSETTS
WORCESTER, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

Offense: Armed Assault with Intent to Murder 265/15

Surety and amount:

Place: Worcester

Counsel: John Roemer, Public Counsel, 340 Main Street, Worcester 10/25/90

Justice disposing of case: Mulkern, J.

1990 August 17	1	Indictment
20		Summons - return day 9/4/90
Sept. 4		Plea Not Guilty
		Bail \$10,000 cash without prejudice (Greenberg, J.)
		Bail Warrant issued
		Conference and report 9/18/90
Oct. 1	2	Pretrial Conference, filed and approved (O'Neil, J.)
	3	Motion for Bill of Particulars, filed in Court and Allowed by agreement (O'Neil, J.)
	4	Motion for Exculpatory Evidence - Criminal Records of Commonwealth
	5	Witness, filed in Court and Allowed by agreement (O'Neil, J.)
	6	Motion for Medical and Physical Evidence-Hospital Records and Johnson Rape Kits, filed in Court and Allowed by agreement (O'Neil, J.)
		Motion to Inspect Medical Records, filed in Court and Allowed by agreement (O'Neil, J.)
16	7	Motion for Bill of Particulars, filed.
	8	Motion for Exculpatory Evidence-Criminal Records of Comm. Witness, filed.
26		Motion #8 Allowed (Tuttle, J.)
Nov. 23	9	Motion for Required Finding of Not Guilty, filed and Denied (Mulkern, J.)
	10	Request for Jury Instructions, filed in Court
	11	Motion in Limine to Exclude evidence of Defendant's Prior Conviction(s), filed in Court
26	12	Verdict--Not Guilty
		Defendant discharged (Mulkern, J.)

Exhibit B

Commonwealth of Massachusetts
WORCESTER SUPERIOR COURT
Case Summary
Criminal Docket

Commonwealth v Hendrickson, Robert W

Details for Docket: WOCR1990-02251

Case Information

Docket Number:	WO CR1990-02251	Caption:	Commonwealth v Hendrickson, Robert W
Entry Date:	08/17/1990	Case Status:	Crim 1 (204 Worcester)
Status Date:	01/13/2004	Session:	Disposed (appeal denied)
Lead Case:	NA	Deadline Status:	Deadline act
Trial Deadline:	09/21/1995	Jury Trial:	NO

Parties Involved

2 Parties Involved in Docket: WOCR1990-02251

Party Involved:		Role:	Defendant
Last Name:	Hendrickson	First Name:	Robert W
Address:	P. O. Box 8000	Address:	
City:	Shirley	State:	MA
Zip Code:	01464	Zip Ext:	
Telephone:			

Party Involved:		Role:	Plaintiff
Last Name:	Commonwealth	First Name:	
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	
Telephone:			

Attorneys Involved

2 Attorneys Involved for Docket: WOCR1990-02251

**Attorney
Involved:**

Last Name: Schubert
Address: 1365 Main Street
City: Springfield
Zip Code: 01103
Telephone: 413-746-1313
Fascimile: 413-746-3102

Firm Name:

First Name: Greg T
Address:
State: MA
Zip Ext:
Tel Ext:
Representing: Hendrickson, Robert W
(Defendant)

**Attorney
Involved:**

Last Name: Methé
Address: 21 Stockbridge Street
City: Springfield
Zip Code: 01103
Telephone: 413-746-9257
Fascimile: 413-732-5828

Firm Name:

First Name: James E
Address:
State: MA
Zip Ext:
Tel Ext:
Representing: Hendrickson, Robert W
(Defendant)

Calendar Events

No Calendar Events found for Docket: WOCR1990-02251.

There are currently no calendar events associated with this case.

Full Docket Entries

112 Docket Entries for Docket: WOCR1990-02251

Entry Date:	Paper No:	Docket Entry:
08/17/1990	1	Indictment returned
10/24/1994		Notice of assembly of record; mailed to App Crt per Rule 9(d) RE:
10/24/1994		Denial of Motion for New Trial - Notices mailed to John J. Conte,
10/24/1994		District Attorney and to Defendant, Robert Hendrickson, pro se.
10/24/1994		Mailed to Appeals Court together with 2 certified copies of docket
10/24/1994		entries & Clerk's Statement of Case.
10/27/1994		Case entered in Appeals Court on 10/25/94. Appeals Crt. No. 94-P-1749
09/18/1995	19	Rescript rec'd from Appeals Court - Order denying Motion for New

09/18/1995	19	Trial AFFIRMED(Dated in Appeals Court on 8/15/95)
03/03/1998		Motion (P#4) This motion is denied without hearing (Travers,J.) See
03/03/1998		motion for judge's endorsement. (Copy to DA, Atty Schubert &
03/03/1998		Defendant)
03/04/1998	20	Appearance of Deft's Atty: Schubert
10/22/1998		Atty Methe appointed by CPCS to review case to determine whether
10/22/1998		counsel should be appointed
09/03/1999	21	Deft files Motion to Vacate Guilty Plea and /or Admission to
09/03/1999	21	Sufficient Facts w/Memorandum of Law in Support and Affidavit of
09/03/1999	21	Robert Hendrickson w/attachments
10/12/1999	22	Deft files Motion for Marking Defendant's Request for a Hearing
10/12/1999	23	Deft files Motion for Writ of Habeas Corpus Ad-Testificandum
10/26/1999	24	Deft files Motion for Appointment of Counsel
11/29/1999		Motion (P#21) Denied (Donohue,J.) Copy to DA & Defendant
11/29/1999		Motion (P#22) Denied (Donohue,J.) Copy to DA & Defendant
11/29/1999		Motion (P#23) Denied (Donohue,J.) Copy to DA & Defendant
11/29/1999		Motion (P#24) Denied (Donohue,J.) Copy to DA & Defendant
11/29/1999	25	ORDER on Defendant's Motion for Appointment of Counsel - Denied
11/29/1999	25	(Donohue,J.) Copy to DA & Defendant
11/29/1999	26	ORDER on Defendant's Motion for a Writ of Habeas Corpus Ad-
11/29/1999	26	Testificandum - Denied (Donohue,J.)
11/29/1999	27	ORDER on Defendant's Motion for a Hearing Date - Denied (Donohue,J.)
11/29/1999	27	Copy to DA & Defendant
11/29/1999	28	ORDER on Defendant's Motion to Vacate Guilty Pleas and/or Admission
11/29/1999	28	to Sufficient Facts - Denied (Donohue,J.) Copy to DA & Defendant
12/06/1999	29	Notice of appeal (P#21)
12/07/1999	30	Deft files Motion for Free Transcripts w/Affidavit of Indigency and
12/07/1999	30	Request for Waiver, Substitution or State Payment of Fees and Costs
01/06/2000		Motion (P#30) Allowed (Donohue,J.)
01/11/2000		Court Reporter Ron Francescone is hereby notified to prepare one copy
01/11/2000		of the transcript of the evidence of 11/26/1990 per Allowed Motion #30
01/31/2000	31	Deft files Application to Proceed in Forma Pauperis w/Affidavit of
01/31/2000	31	Indigency w/ attachments
02/01/2000		Transcript received from Ron Francescone, 2 volumes, November 26,1990
02/11/2000		Record assembled. Notices mailed to John J. Conte, District Attorney
02/11/2000		and to Robert Hendrickson, Pro se. Notice under Appellate Rule 9(d)
02/11/2000		mailed to Appeals Court together with the Denied motion, 2 Certified
02/11/2000		copies of docket entries, Clerk's Statement of Case & Notice of
02/11/2000		Appeal.
02/16/2000		Case entered in Appeals Court 2/15/00, #00-P-286
07/18/2001	32	Rescript received from Appeals Court; Order denying motion to vacate

07/18/2001	32	guilty pleas affirmed (Ashley Ahearn,Clerk) Copy to DA, Probation &
07/18/2001	32	Defendant
10/09/2002		copy of pre-trial conference report sent on October 09, 2002 to
10/09/2002		defendant per his request (See case # 2250 for report on offenses
10/09/2002		90-2550-2256)
01/09/2003	33	Defendant files Motion to Withdraw Guilty Plea and Order a New
01/09/2003	33	Trial, Affidavit in Support, Memorandum of Law and incorporated
01/09/2003	33	Exhibits "A" through "D" and certificate of service.
01/09/2003	34	Deft files Motion for Appointment of Counsel
01/09/2003	35	Deft files Motion for Evidentiary Hearing
01/16/2003		Motion (P#33) denied as waived (See Order P#36) (Francis R. Fecteau,
01/16/2003		Justice (R.A.J.)). Copies mailed to DA and Defendant
01/16/2003		Re: (P#34) In light of action on Paper # 33, no action is necessary.
01/16/2003		(Fecteau,J) (Copies sent to DA and deft)
01/16/2003		Re: (P#35) In light of action on Paper # 33, no action is necessary.
01/16/2003		(Fecteau,J) (Copies sent to DA and deft)
01/16/2003	36	ORDERED: on defendant's Motion to Withdraw Guilty Plea and Order a
01/16/2003	36	New Trial (The issues alleged by the defendant's present motion are
01/16/2003	36	deemed waived - See Order) (Francis R. Fecteau, Justice (R.A.J.))
01/16/2003	36	(copies sent to DA and defendant)
01/28/2003	37	Deft files Notice of appeal (Denial of Motion for New Trial)
02/13/2003	38	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)
02/13/2003	38	(copies to DA, prob & deft)
02/21/2003	39	Notice of Entry of appeal received from the Appeals Court No.
02/21/2003	39	2003-P-0227 (See case # 90-2251 P#39)
03/07/2003	40	General correspondence regarding defendant's sent two (2) appellate
03/07/2003	40	briefs / one (1) was sent to the District Attorney's Office and the
03/07/2003	40	other place in the file
08/12/2003	41	Motion by Deft: for Free Transcript on Probation Surrender Hearing
08/12/2003	41	dated November 26, 1990 before Judge Mulkern and court reporter R.
08/12/2003	41	Fransecone on case 89-1964
09/03/2003		Motion (P#41) deft request for the probation hearing surrendering
09/03/2003		hearing pages 264 thru 268 sent to the deft per Judge Fecteau Copies
09/03/2003		mailed to the deft September 03, 2003
09/03/2003		case in post-conviction
01/13/2004	42	Rescript received from Appeals Court; judgment AFFIRMED Order denying
01/13/2004	42	motion to withdraw guilty plea and order new trial affirmed
04/08/2004	43	Motion by Deft: for Release from Unlawful Restraint with Affidavit
04/08/2004	43	and Memorandum in support of
04/08/2004	44	Motion for appointment of counsel
05/04/2004	45	Motion by Deft: to release from unlawful restraint with affidavit and

05/04/2004	45	memorandum in support of
05/04/2004	46	Motion for appointment of counsel
06/15/2004		Motion Re: P# 43 - The Commonwealth shall have 45 days within which
06/15/2004		to file a responsive pleading (McCann,J)
06/15/2004		Motion Re: P#45 Commonwealth shall have 45 days within which to file
06/15/2004		an opposition (McCann,J)
07/21/2004	47	Motion by Deft: for interlocutory hearing of evidence with affidavit
07/21/2004	47	in support of (sent to Judge McCann)
07/28/2004	48	Motion by Commonwealth: opposition to defendant's motion to release
07/28/2004	48	from unlawful restraint (sent to Judge McCann)
07/29/2004		Motion (P#47) denied (McCann, Justice). Copies mailed to DA and deft
07/29/2004		(see case # 90-2251)
07/29/2004		Motion (P#48) Defendant's motion to be released from unlawful
07/29/2004		restraint is denied setforth in the Commonwealth Opposition. (McCann,
07/29/2004		Justice). Copies mailed to DA and the deft
07/30/2004	49	Motion by Deft: rebuttal to the Commonwealth's opposition (sent to
07/30/2004	49	Judge McCann)
08/06/2004	50	Motion for appointment of counsel
08/06/2004	51	Motion by Deft: for declaratory judgement and for a writ of habeas
08/06/2004	51	corpus with release from unlawful restraints pursuant to MGL 231(A)
08/06/2004	51	s1 et, al with affidavit and memorandum in support of
08/18/2004		Motion (P#50) Refer to CPCS for screening (McCann,J) deft notified

Charges

1 Charges for Docket: WOCR1990-02251

No.	Charge Description:	Indictment:	Status:
1	Rape, aggravated	WODA90-02251	Guilty plea

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Exhibit C

**Commonwealth of Massachusetts
WORCESTER SUPERIOR COURT
Case Summary
Criminal Docket**

Commonwealth v Hendrickson, Robert W

Details for Docket: WOCR1990-02253

Case Information

Docket Number:	WO CR1990-02253	Caption:	Commonwealth v Hendrickson, Robert W
Entry Date:	08/17/1990	Case Status:	Crim 1 (204 Worcester)
Status Date:	01/13/2004	Session:	Disposed (appeal denied)
Lead Case:	NA	Deadline Status:	Deadline act
Trial Deadline:	09/25/1995	Jury Trial:	NO

Parties Involved

2 Parties Involved in Docket: WOCR1990-02253

Party Involved:		Role:	Defendant
Last Name:	Hendrickson	First Name:	Robert W
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	
Telephone:			

Party Involved:		Role:	Plaintiff
Last Name:	Commonwealth	First Name:	
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	
Telephone:			

Attorneys Involved

No Attorneys found for Docket: WOCR1990-02253.

There are currently no attorneys associated with this case.

Calendar Events

No Calendar Events found for Docket: WOCR1990-02253.

There are currently no calendar events associated with this case.

Full Docket Entries

82 Docket Entries for Docket: WOCR1990-02253

Entry Date:	Paper No:	Docket Entry:
08/17/1990	1	Indictment returned
10/24/1994		Notice of assembly of record; mailed to App Crt per Rule 9(d) RE:
10/24/1994		Denial of Motion for New Trial - Notices mailed to John J. Conte,
10/24/1994		District Attorney and to Defendant, Robert Hendrickson, pro se.
10/24/1994		Mailed to Appeals Court together with 2 certified copies of docket
10/24/1994		entries & Clerk's Statement of Case.
10/27/1994		Case entered in Appeals Court on 10/25/94. App. Crt. No. 94-P-1749.
09/18/1995		Rescript rec'd from Appeals Court - Order denying Motion for New
09/18/1995		Trial AFFIRMED(Dated in Appeals Court on 8/15/95)(See Mo. #19 in case
09/18/1995		#90-2251)
09/03/1999		Deft files Motion to Vacate Guilty Plea and/or Admission to
09/03/1999		Sufficient Facts w/Memorandum of Law in Support and Affidavit of
09/03/1999		Robert Hendrickson w/attachments (See P#21 in Docket #90-02251)
10/12/1999		Deft files Motion for Marking Defendant's Request for a Hearing (See
10/12/1999		P#22 in docket #90-02251)
10/12/1999		Deft files Motion for Writ of Habeas Corpus Ad-Testificandum (See
10/12/1999		P#23 in Docket #90-02251)
10/26/1999		Deft files Motion for Appointment of Counsel (See P#24 in Docket
10/26/1999		#90-02251)
11/29/1999		Motion (P#21) Denied (Donohue,J.) Copy to DA & Defendant
11/29/1999		Motion (P#22) Denied (Donohue,J.) Copy to DA & Defendant
11/29/1999		Motion (P#23) Denied (Donohue,J.) Copy to DA & Defendant
11/29/1999		Motion (P#24) Denied (Donohue,J.) Copy to DA & Defendant
11/29/1999		ORDER on Defendant's Motion for Appointment of Counsel - Denied (See
11/29/1999		P#25 in Docket #90-02251)
11/29/1999		ORDER on Defendant's Motion for a Writ of Habeas Corpus Ad

11/29/1999	Testificandum - Denied (Donohue,J.) Copy to DA & Defendant (See P#26
11/29/1999	in Docket #90-02251)
11/29/1999	ORDER on Defendant's Motion for a Hearing Date - Denied (Donohue,J.)
11/29/1999	Copy to DA & Defendant (See P#27 in Docket #90-02251)
11/29/1999	ORDER on Defendant's Motion to Vacate Guilty Pleas and/or Admission
11/29/1999	to Sufficient Facts - Denied (Donohue,J.) Copy to DA & Defendant (See
11/29/1999	P#28 in Docket #90-02251)
12/06/1999	Notice of appeal (P#21) (See P#29 in Docket #90-02251)
12/07/1999	Deft files Motion for Free Transcripts w/Affidavit of Indigency and
12/07/1999	Request for Waiver, Substitution or State Payment of Fees and Costs
12/07/1999	(See P#30 in Docket #90-02251)
01/06/2000	Motion (P#30) Allowed (Donohue,J.)
01/11/2000	Court Reporter Ron Francescone is hereby notified to prepare one copy
01/11/2000	of the transcript of the evidence of 11/26/1990 per Allowed Motion
01/11/2000	#30.
02/01/2000	Transcript received from Ron Francescone, 2 volumes, November 26,1990.
02/11/2000	Record Assembled. Notices mailed to John J. Conte, District Attorney
02/11/2000	and to Robert Hendrickson, Pro se. Notice under Appellate Rule 9(d)
02/11/2000	mailed to Appeals Court together with the Denied motion, 2 certified
02/11/2000	copies of docket entries, Clerk's Statement of Case & Notice of
02/11/2000	Appeal.
02/16/2000	Case entered in Appeals Court 2/15/00, #00-P-286
10/09/2002	copy of pre-trial conference report sent on October 09, 2002 to
10/09/2002	defendant per his request (See case # 2250 for report on offenses
10/09/2002	90-2550-2256)
01/09/2003	Defendant files Motion to Withdraw Guilty Plea and Order a New Trial,
01/09/2003	Affidavit in Support, Memorandum of Law and incorporated Exhibits
01/09/2003	"A" through "D" and certificate of service (See case 1990-2251, P#33)
01/09/2003	Deft files Motion for Appointment of Counsel (P#34)
01/09/2003	Deft files Motion for Evidentiary Hearing (#35)
01/16/2003	Motion (P#33) denied as waived (See Order P#36) (Francis R. Fecteau,
01/16/2003	Justice (R.A.J.)). Copies mailed to DA and Defendant (See Case #
01/16/2003	90-2251)
01/16/2003	Re: (P#34) In light of action on Paper # 33, no action is necessary.
01/16/2003	(Fecteau,J) (Copies sent to DA and deft) (See case #90-2251)
01/16/2003	Re: (P#35) In light of action on Paper # 33, no action is necessary.
01/16/2003	(Fecteau,J) (Copies sent to DA and deft) (See case #90-2251)
01/16/2003	ORDERED: on defendant's Motion to Withdraw Guilty Plea and Order a
01/16/2003	New Trial (The issues alleged by the defendant's present motion are
01/16/2003	deemed waived - See Order) (See Case # 90-2251 P#36) (Francis R.
01/16/2003	Fecteau, Justice (R.A.J.)) (copies sent to DA and defendant)

01/28/2003	NOTICE of APPEAL (Denial of Motion for New Trial) FILED (see P#37,
01/28/2003	case #90-2251)
02/13/2003	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)
02/13/2003	(copies to DA, prob & deft) (see P#38, case #90-2251)
02/21/2003	Notice of Entry of appeal received from the Appeals Court No.
02/21/2003	2003-P-0227 (See case # 90-2251 P#39)
03/07/2003	General correspondence regarding defendant's sent two (2) appellate
03/07/2003	briefs / one (1) was sent to the District Attorney's Office and the
03/07/2003	other place in the file (see case #90-02251 P#40)
08/12/2003	Motion by Deft: for Free Transcript on Probation Surrender Hearing
08/12/2003	dated November 26, 1990 before Judge Mulkern and court reporter R.
08/12/2003	Fransecone on case 89-1964 (see case # 90-2251 P# 41)
01/13/2004	Rescript received from Appeals Court; judgment AFFIRMED Order denying
01/13/2004	motion to withdraw guilty plea and order new trial affirmed (see
01/13/2004	case 90-2251 P#42)

Charges

1 Charges for Docket: WOCR1990-02253

No.	Charge Description:	Indictment:	Status:
1	Indecent assault & battery on person 14 or over	WODA90-02253	Guilty plea

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